IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5845 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE K.A.PUJ

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

EXECUTIVE ENGINEER

Versus

MUKESH H. DAVE

Appearance:

1. Special Civil Application No. 5845 of 1993

Ms. Manisha Lavkumar, AGP for Petitioners.

MR JV JAPEE for Respondent No. 1

CORAM : MR.JUSTICE K.A.PUJ

Date of decision: 10/04/2003

ORAL JUDGEMENT

The petitioners being the State Government authorities have challenged the award dated 24th April 1992 passed by the Labour Court, Bhavnagar in Reference (LCB) No. 165/91 whereby the Labour Court has directed the petitioners to reinstate the respondent and to pay

full backwages with continuity in service with effect from 1st April 1986.

2. It is the case of the petitioners that the respondent was engaged as a Rojamdar, i.e., casual labourer by petitioner No.2. He was engaged in casual nature of work as and when the work was available with the petitioner. The respondent was engaged as casual labourer for 119 days in the year 1986. It was further stated that after 30th June 1986 the respondent had never reported for work before the petitioners as there was no work available with the petitioners. Thereafter, on 31st August 1990 the respondent approached the petitioner for reinstatement and the petitioner was informed by letter dated 7th September 1990 that the respondent was not entitled to reinstatement. The respondent therefore filed the complaint before the Assistant Commissioner of Labour, Bhavnagar and the matter was referred to the Labour Court, Bhavnagar, on 14.5.1991. The award was passed by the Labour Court on 24th April 1992 reinstating the petitioner with full backwages. It is this award which is under challenge before this Court.

3. This Court had issued Rule on 17th June 1993 and passed the following order :

> "Rule. As regards int. relief request for stay of directions re reinstatement is refused. As far as the payment of backwages is concerned, it is directed that the amount of backwages shall be paid from April 1, 1991 onwards. This amount will be calculated by the petitioner and paid to the respondent latest by August 15, 1993. If the amount is not paid by August 15, 1993, it shall carry interest at the rate of 15% till the amount is paid. On fulfillment of the aforesaid conditions the petitioner will be at liberty to retain the amount of backwages for the period prior to March 31, 1991."

4. Heard Ms. Manisha Lavkumar, ld. AGP appearing for the petitioners and Mr. JV Japee, ld. advocate appearing for the respondent. The learned advocates have submitted that the petitioners have a very strong case in their favour and all documents which are placed before this Court support the case of the petitioners. The Labour Court has not considered the voluminous records and materials in its true perspective and passed the award directing the petitioners to reinstate the respondent with full backwages. It was further submitted that it is only because of the interim order passed by

this Court on 17-6-1993, the respondent was reinstated with full backwages with effect from 1st April 1991. It was further submitted that the order passed by the Labour Court is ex facie unjust, improper and it casts unnecessary burden on the Government. The order is therefore required to be quashed and set aside.

5. Mr. Japee, ld. advocate for the respondent on the other hand submitted that the Labour Court has passed the award after considering the entire facts and circumstances of the case as well as after taking into consideration the relevant materials produced before the Court. This Court should not therefore exercise its writ jurisdiction under Article 226 of the Constitution of India and disturb the decision arrived at by the Labour Court. In view of the facts and circumstances and the order of the Labour Court no interference should be made in the said order.

6. I heard the learned AGP as well as the ld. advocate appearing for the parties and I have also gone through the award of the Labour Court as well as the order passed by this Court. This Court, at the time of admission of this petition, passed precisely a speaking order granting limited interim relief to the petitioners. Even at that time the award passed by the Labour Court was modified to the effect that the backwages were to be paid to the respondent with effect from 1st April 1991. Not only that, the petitioners were also ordered to reinstate the respondent pursuant to the order passed by the Labour Court. This order has been complied with by the petitioner authorities and the respondent is in service pursuant to the aforesaid interim order. Even if the petitioners may have a good case on merits and after evaluation and examination of the documents the Court can be persuaded but looking to the nature and scope of powers to be exercised by this Court under Article 226 and 227 of the Constitution of India, this Court does not think it proper to undergo the exercise especially in view of the fact that the interim order was passed by this Court pursuant to which the respondent was reinstated and backwages were paid with effect from 1st April 1991.

7. Having regard to the peculiar facts and circumstances of the case and having considered the principles of law, equity and justice, I am of the view that the interim order passed by this Court should be held as the final order and no further interference is required so far as the order of the Labour Court is concerned. I, therefore, partly allow this petition by

observing that the Labour Court's award does not call for interference so far as the reinstatement is concerned, and so far as the backwages are concerned, the respondent was entitled to backwages with effect from 1st April 1991 as granted by this Court while passing interim order.

8. With the aforesaid observations, the petition is partly allowed. Rule is made absolute to the above extent with no order as to costs.

rmr. [K.A. Puj, J.]